CLERK'S COPY

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 34

THE UNITED STATES OF AMERICA, PETITIONER

vs.

RAYMOND WOOD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED APRIL 20, 1936

CERTIORARI GRANTED MAY 25, 1936

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No.

THE UNITED STATES OF AMERICA, PETITIONER

vs.

RAYMOND WOOD

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

INDEX

	Original	Print
Record from Police Court of District of Columbia	1	1
Caption [omitted in printing]	1	1
Docket entries	1	1
Information	2	1
Motion for new trial	4	3
Bill of exceptions and order settling same	5	4
Bond on writ of error [omitted in printing]	9	6
Writ of error	13	6
Proceedings in United States Court of Appeals for District of Columbia	14	7
Stipulation as to sole assignment of error	14	7
Minute entry of argument	17	7
Opinion, Groner, J	18	8
Dissenting opinion, Robb, J	23	13
Judgment	25	16
Designation of record	26	16
Clerk's certificate [omitted in printing]	28	16

59532—36——1

1 In Police Court of the District of Columbia

No. 375266. November Term, 1935

Information for larceny

UNITED STATES

vs.

RAYMOND WOOD

[Caption omitted]

Docket entries

November 25, 1935. Information filed. #1. Elizabeth A. Williams. Schuldt, Judge. #2. Raymond Wood. McMahon, Judge. #2:

December 17, 1935. Continued to Jan. 7, 1936. Request of defense.

January 7, 1936. Continued to Jan. 20, 1936. Not reached.

January 20, 1936. Verdict—Guilty. Continued to Jan. 25, 1936.

January 23, 1936. Motion for new trial filed. Set for hearing Jan. 25, 1936.

January 25, 1936. Continued to Jan. 30, 1936. Request of Court.

February 1, 1936. Motion for new trial overruled. Continued to February 3, 1936.

February 3, 1936. Judgment Guilty. 240 days. Committed. Exceptions noted. Notice given of applying to the Court of Appeals for a Writ of Error. Appeal Bond $500.

February 4, 1936. Appeal Bond given, $500, J. W. Stewart, surety.

February 5, 1936. Bill of Exceptions submitted.

February 11, 1936. Bill of Exceptions settled, signed, sealed, and filed.

February 18, 1936. Copy of record and proceedings in this case, together with Writ of Error, sent to Court of Appeals in obedience to said Writ.

2 In Police Court of the District of Columbia

Information

Filed Nov. 25, 1935

DISTRICT OF COLUMBIA, *ss:*

Leslie C. Garnett, Attorney of the United States in and for the District of Columbia, who, for the said United States, prosecutes in this behalf, by Arthur J. McLaughlin, Esquire, one of his assistants, comes here into Court, at the District aforesaid, on the 25th day of November, in the year of our Lord, one thousand nine

hundred and thirty-five, in this said Term, and for the said United States, gives the Court here to understand and be informed, on the oath of one Joseph F. Bargani that one Elizabeth A. Williams and one Raymond Wood, each late of the District aforesaid, on the 22nd day of November in the year of our Lord one thousand nine hundred and thirty-five, with force and arms, at the District aforesaid, and within the jurisdiction of this Court, three dresses, all of the value of 17 dollars and 83 cents, all lawful money of the said United States, of the goods, chattels, moneys, and property of The Palais Royal, Inc., a body corporate; then and there being, feloniously did steal, take, and carry away, against the form of the statute in such case made and provided, and against the peace and Government of the United States of America.

Whereupon, the said Attorney of the United States, who, in this behalf, prosecutes for the said United States, in manner and form as aforesaid, prays the consideration of the Court here in the premises, and that due proceedings may be had against the said Elizabeth A. Williams and Raymond Wood in this behalf to make them answer to the said United States touching and concerning the premises aforesaid.

LESLIE C. GARNETT,
Attorney of the United States
in and for the District of Columbia.
(Signed) ARTHUR J. MCLAUGHLIN,
His said Assistant.

Personally appeared Joseph F. Bargani before me this 25th day of November, A. D. 1935, and being duly sworn according to law, doth declare and say that the facts as set forth in the foregoing information are true.

(Signed) ARTHUR J. MCLAUGHLIN,
Assistant Attorney of the United States
in and for the District of Columbia.

3 [File endorsement omitted.]
#1. Schuldt, Judge.
#2. McMahon, Judge.
No. 357266.

UNITED STATES
vs.
ELIZABETH A. WILLIAMS; RAYMOND WOOD

LARCENY

Witnesses: Jos. F. Bargani, Palais Royal; James E. Kane, #1; E. E. Thompson, #1; Atty. Miller.
Nov. 25, 1935.
#2. Plea Not Guilty. Jury trial demanded. Cont'd 12/17/35.
#2. Bond, 300, J. W. S.

#1. Plea Not Guilty. Jury trial waived. Judgment Guilty. 60 days—committed. Term continued.
#2. Dec. 17, 1935. Cont. 1/7/36. Request of defense.
Jan. 7, 1936. Cont'd to 1/20/36. Not reached.
#2. Jan. 20, 1936. Verdict—Guilty. Cont'd to 1/25/36.
Jan. 23, 1936. Motion for new trial filed. Set for hearing 1/25/36.
Jan. 25, 1936. Cont'd to 1/30/36. Request of Court.
Feb. 1, 1936. Motion for new trial overruled. Cont'd to 2/3/36.
#2. Feb. 3, 1936. Judgment Guilty. 240 days. Committed. Exceptions noted. Notice given of applying to the Court of Appeals for a Writ of Error. Appeal Bond, $500.
Feb. 4, 1936. Appeal Bond $500 given. J. W. Stewart surety.
Feb. 5, 1936. Bill of Exceptions submitted.
Feb. 11, 1936. Bill of Exceptions settled, signed, sealed, and filed.

4 In Police Court of the District of Columbia

[Title omitted.]

Motion for a new trial

Filed Jan. 23, 1936

Comes now the defendant by his attorney, Robert I. Miller, and moves the Court for a new trial; and for cause states the following:
1. That the verdict was contrary to law.
2. That the verdict was contrary to the evidence.
3. That the jury that determined the verdict was illegally constituted.
4. And for such other reasons and causes as may appear upon the argument of this motion.

(Signed) ROBERT I. MILLER,
Phone, National 2937. 503 D St. NW., D. C.

UNITED STATES ATTORNEY:

Please take notice that I shall set the foregoing motion for hearing on Saturday, January 25th, 1936, at 10 a. m., or as soon thereafter as counsel may be heard.

(Signed) ROBERT I. MILLER,
Attorney for Defendant.

Service of a copy of the foregoing acknowledged 1/23/36.

(Signed) A. J. MCLAUGHLIN,
United States Attorney.

[File endorsement omitted.]

5 In Police Court of the District of Columbia

No. 375266

UNITED STATES

vs.

RAYMOND WOOD

Bill of exceptions

Filed Feb. 11, 1936

Be it remembered: That at the trial of this case before the Honorable John P. McMahon, one of the Judges of the Police Court, and a jury in the United States Branch of the Police Court of the District of Columbia, the United States being represented by Arthur J. McLaughlin, Esquire, Assistant United States Attorney, and the defendant by Robert I. Miller, Esquire, the following proceedings were had:

On the 22nd day of November 1935 an information was filed in the Police Court against the defendant, Raymond Wood, by the United States, by an Assistant United States Attorney, and prosecuted in the name of Leslie C. Garnett, Esquire, Attorney for the United States, *in and for* the District of Columbia. The said information charged the defendant, Raymond Wood, with the larceny in the District of Columbia of three dresses of the value of eighteen ($18.00) dollars, from the Palais Royal, a corporation, on the 22nd day of November 1935 against the peace and Government of the United States of America. The defendant entered a plea of not guilty to the charge contained in the Information and demanded a trial by jury.

Thereupon, on the 20th day of January 1936 in order to try the issues jointed herein, twelve prospective jurors were called to be examined on their voir dire, before the Honorable John P. McMahon, one of the Judges of the Police Court. Whereupon, at the request of counsel for the defendant, the Court inquired if any of the said twelve prospective jurors were notaries public, or whether they had Government contracts or were employed by the United States or the District of Columbia, or were war veterans, or received a bonus or pension from the Government, to which inquiries, prospective juror

6 Frank Johnson answered that he is the holder of a bonus certificate; prospective juror Robert E. Davison answered that he is employed as a clerk at the United States Weather Bureau; prospective juror Norman H. Smith answered that he is employed as a clerk at the Federal Emergency Relief Administration; prospective juror Oscar Kibbey answered that he is employed as a Clerk in the United States Treasury Department; prospective juror Benjamin P. Johnson answered that he is employed as a clerk at the United States Navy Yard; and prospective juror Sarah Giles

(a housewife) answered that she received a Civil War Pension. Whereupon the United States through its Assistant United States Attorney announced that it was satisfied. Whereupon counsel for the defendant challenged each of the above named prospective jurors individually and collectively, for cause, upon the ground that each of the said prospective jurors had an interest in the United States Government, which disqualified them to sit in the trial of a criminal cause, to which the United States was a party, which said challenge was disallowed by the Court, whereupon counsel for the defendant noted an exception and gave notice of his intention to apply to the United States Court of Appeals for a Writ of Error. Thereupon the United States through its Assistant United States Attorney again announced that it was satisfied with the jury, and counsel for the defendant then exhausted his three peremptory challenges by striking prospective jurors Frank Johnson, Robert E. Davison, and Norman H. Smith. Three other prospective jurors were called to take the places of the three they excused; and thereupon the Government, through its Assistant United States Attorney, then announced that it was satisfied wih the jury, whereupon counsel for the defendant again challenged for cause, upon the same grounds, the said Sarah Giles, Oscar Kibbey, and Benjamin P. Johnson, which challenge was disallowed by the Court, to which counsel for the defendant noted an exception and gave notice of his intention to apply to the United States Court of Appeals for a Writ of Error. Thereupon the jury, which included as members thereof the said Sarah Giles, Oscar Kibbey, and Benjamin P. Johnson, was sworn to try the issues over the objection and exception of counsel for the defendant.

7 On the 20th day of January 1936 a verdict of guilty as charged was returned by the jury.

The Government adduced substantial evidence to support the charge in the information and the verdict of the jury. No evidence was offered on behalf of the defendant. Counsel for the defendant thereupon gave notice of his intention to file a motion for a new trial.

A motion for a new trial was duly filed, and on the 3rd day of February 1936 was overruled; whereupon the defendant was sentenced to two hundred forty days. Thereupon counsel for the defendant noted an exception and gave notice of his intention to apply to the United States Court of Appeals for a Writ of Error.

And the Court hereby certifies that the foregoing is the substance of the proceedings bearing upon the exceptions herein reserved on behalf of the defendant.

The defendant now tenders this, his Bill of Exceptions herein, and prays that the same may be signed and sealed, enrolled and made a part of the record in this cause, nunc pro tunc, this 11th day of February, A. D. 1936, which is accordingly done.

Given under my hand and seal the day and year aforesaid.

(Signed) JOHN P. MCMAHON,
Judge, United States Branch Police Court, D. C.

8 [File endorsement omitted.]

9 [Bond on writ of error for $500.00 omitted in printing.]

13 *Writ of error*

UNITED STATES OF AMERICA, *ss:*

The President of the United States

To the Honorable JOHN P. McMAHON,
Judge of the Police Court of the District of Columbia.

Greeting: Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Police Court, before you, between United States, Plaintiff, and Raymond Wood, Defendant, Information No. 375266, a manifest error hath happened, to the great damage of the said Defendant as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Court of Appeals for the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable George E. Martin, Chief Justice of the said Court of Appeals, the 14th day of February, in the year of our Lord one thousand nine hundred and thirty six.

[SEAL] HENRY W. HODGES,
Clerk of the United States Court of Appeals
of the District of Columbia.
By MONARCH BURKE,
Deputy Clerk.

Allowed by:
D. LAWRENCE GRONER,
Associate Justice of the United States Court of Appeals
for the District of Columbia.

14 Addition to record per stipulation of counsel.

In United States Court of Appeals for the District of Columbia

No. 6646

RAYMOND WOOD, PLAINTIFF IN ERROR

v.

THE UNITED STATES

Stipulation as to sole assignment of error

(Filed Feb. 24, 1936)

It is hereby stipulated by and between counsel for the respective parties that the following shall be the sole assignment of error herein:

The Court erred in overruling defendant's challenges for cause to jurors Frank Johnson, Robert E. Davison, Norman H. Smith, Oscar Kibbey, Benjamin P. Johnson, and Sarah Giles, as disclosed by the Bill of Exceptions herein and the said Jury was thus improperly constituted in violation of the Constitution of the United States and the Fifth and Sixth Amendments thereof.

(Signed) ROBERT I. MILLER,
WILLIAM E. LEAHY,
WM. J. HUGHES, JR.,
Attorneys for Plaintiff in Error.

LESLIE C. GARNETT,
IRVIN GOLDSTEIN
Attorneys for Respondent.

15 [File endorsement omitted.]

16-17 In United States Court of Appeals for District of Columbia

[Title omitted]

Minute entry of argument

(March 6, 1936)

The argument in the above entitled cause was commenced by Mr. Robert I. Miller, attorney for plaintiff in error, and was continued by Mr. William J. Hughes, Jr., attorney for plaintiff in error, and was continued by Mr. Irvin Goldstein, attorney for defendant in error, and was concluded by Mr. William E. Leahy, attorney for plaintiff in error.

18 In United States Court of Appeals for the District of Columbia

No. 6646

RAYMOND WOOD, APPELLANT

v.

THE UNITED STATES, APPELLEE

Appeal from the Police Court of the District of Columbia

Argued March 6, 1936—Decided March 25, 1936

Robert I. Miller, *William E. Leahy* and *William J. Hughes, Jr.*, all of Washington, D. C., for appellant.

L. C. Garnett, United States Attorney, and *Irvin Goldstein*, Assistant United States Attorney, both of Washington, D. C., for appellee.

Before MARTIN, C. J., and ROBB, VAN ORSDEL, GRONER, and STEPHENS, JJ.

Opinion

GRONER, J.: Appellant was convicted of petty larceny in the Police Court of the District of Columbia and sentenced to 240 days' confinement in jail. We shall call him defendant.

At his trial twelve prospective jurors were called. In their examination it was disclosed that one of them was the holder of a "bonus certificate"; another was a clerk in the United States Weather Bureau; another a clerk in the Federal Emergency Administration; another a clerk in the Treasury Department; and another a clerk in the Navy Yard. One was a Civil War pensioner. Counsel for defendant challenged each of these prospective jurors individually and collectively for cause on the ground that each had an interest in the United States which disqualified him to sit in the trial of a criminal case to which the United States was a party. The court disallowed the challenge. When the jury was finally impaneled and sworn, one of the twelve was a clerk in the Treasury Department, one a clerk in the Navy Yard, and one a recipient of a Civil War pension. All had been challenged for cause, both before and after the exhaustion of defendant's peremptory challenges. The case was tried. A motion for a new trial, urged on the ground that the jury was illegally constituted, was overruled and sentence imposed. We granted an appeal because of the importance of the question involved.

On the appeal the United States relies upon a recent statute—

Act of August 22, 1935 (Session Laws, 1st Sess., 74th Con-
19 gress, 1935, part I, p. 862), entitled, "An act to amend the law providing for exemptions from jury service in the District of Columbia." It reads as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 360 of title 18 of the Code of the District of Columbia of 1929, otherwise known as 'section 217 of the Code of Law for the District of Columbia', approved March 3, 1901, be, and the same is hereby, amended to read as follows:

"'All executive and judicial officers of the Government of the United States and of the District of Columbia, all officers and enlisted men of the Army, Navy, Marine Corps, and Coast Guard of the United States in active service, those connected with the police and fire departments of the United States and of the District of Columbia, counselors and attorneys at law in actual practice, ministers of the gospel and clergymen of every denomination, practicing physicians and surgeons, keepers of hospitals, asylums, almshouses, or other charitable institutions created by or under the laws relating to the District of Columbia, captains and masters and other persons employed on vessels navigating the waters of the District of Columbia shall be exempted from jury duty, and their names shall not be placed on the jury lists.

"'All other persons, otherwise qualified according to law whether employed in the service of the Government of the United States or of the District of Columbia, all officers and enlisted men of the National Guard of the District of Columbia, both active and retired, all officers and enlisted men of the Military, Naval, Marine, and Coast Guard Reserve Corps of the United States, all notaries public, all postmasters, and those who are the recipients or beneficiaries of a pension or other gratuity from the Federal or District Government or who have contracts with the United States or the District of Columbia, shall be qualified to serve as jurors in the District of Columbia and shall not be exempt from such service: *Provided*, That employees of the Government of the United States or of the District of Columbia in active service who are called upon to sit on juries shall not be paid for such jury service but their salary shall not be diminished during their term of service by virtue of such service, nor shall such period of service be deducted from any leave of absence authorized by law. Approved, August 22, 1935.'"

Prior to the passage of this statute the provision with relation to the qualifications of a juror was that he should be a citizen of the United States, a resident of the District of Columbia, over twenty-one and under sixty-five years of age, able to read and write and understand the English language, and a person who had never been convicted of a felony or misdemeanor involving moral turpitude. In 1908 the Supreme Court held in Crawford v. United States, 212 U. S. 183, that an employee of the United States was not qualified to serve as a member of a petit jury in the District of Columbia in the trial of a criminal case. The effect of the decision and of others of like nature which followed, resulted, it is said, in narrowing the eligible list of jurors in the District to the point where it sometimes

became difficult to secure jurors possessing the necessary qualifications. To correct this, Congress extended the list of eligibles to include employees of the United States and of the District of Columbia, officers and enlisted men of the National Guard and of the Military, Naval, Marine, and Coast Guard reserve corps, notaries public, postmasters, and recipients of pensions and gratuities from the United States or the District, as well as those having contracts with the United States or the District; and the question we have to decide is whether this statute, when applied in a criminal case like the present, is in violation of the provisions of the Sixth Amendment guaranteeing to the accused in all criminal prosecutions the right of trial by an impartial jury. Stated otherwise, the question is whether defendant has been accorded a trial by an impartial jury within the meaning of the Sixth Amendment of the Constitution.

It is, of course, elementary that all the provisions of the Constitution are in all respects applicable to the District of Columbia. Callan v. Wilson, 127 U. S. 540, 550; Capital Traction Co. v. Hof, 174 U. S. 1, 5; Downes v. Bidwell, 182 U. S. 244. And in the Downes case the Court said:

"This District has been a part of the States of Maryland and Virginia. It had been subject to the Constitution, and was a part of the United States. The Constitution had attached to it irrevocably. There are steps which can never be taken backward. The tie that bound the states of Maryland and Virginia to the Constitution could not be dissolved, without at least the consent of the Federal and state governments to a formal separation. The mere cession of the District of Columbia to the Federal government relinquished the authority of the states, but it did not take it out of the United States or from under the aegis of the Constitution. Neither party had ever consented to that construction of the cession. If, before the District was set off, Congress had passed an unconstitutional act affecting its inhabitants, it would have been void. If done after the District was created, it would have been equally void; in other words, Congress could not do indirectly, by carving out the District, what it could not do directly. The District still remained a part of the United States, protected by the Constitution."

It is equally elementary that the word "jury" and the words "trial by jury" and "impartial jury" should be construed with reference to the meanings they had in England and at the time of the adoption of the Constitution and Bill of Rights. Thompson v. Utah, 170 U. S. 343. The American colonists regarded the right to trial by jury—which, of course, means trial by an impartial jury—as "the most transcendent privilege which any subject can enjoy." They regarded their claim to it as the clear and inevitable result of their origin and historical development. "When our more immediate ancestors removed to America, they brought this great privilege with them, as their birthright and inheritance, as a part of that admirable common

law which had fenced round and interposed barriers on every side against the approaches of arbitrary power. It is now incorporated into all our State constitutions as a fundamental right, and the Constitution of the United States would have been justly obnoxious to the most conclusive objection if it had not recognized and confirmed it in the most solemn terms." 2 Story on the Constitution, § 1779.

At common law employees or servants of a party to a suit were disqualified as jurors on the theory of implied prejudice or bias. In Coke's Commentary on Littleton's Institute (p. 155), it is stated:

"He that is of a jury, must be liber homo, that is, not only a freeman and not bond, but also one that hath such freedom of mind as he stands indifferent as he stands unsworn."

And Blackstone defined a principal cause of challenge as one "where the cause assigned carries with it prima facie evident marks of suspicion either of malice or favour"—and this situation, he declared, exists as to jurors in all cases of the relation of master and servant. 3 Black. Com. 358.

Without more, therefore, it is safe to say that at common law the relationship of employer and employee worked an absolute disqualification, and this was equally true in this country at the time of the adoption of the Constitution. But it is insisted, on the part of the United States, that, since the right to establish qualifi-
21 cations for those who shall serve as jurors is, a matter entrusted to the state, it is within the exclusive power of the legislature to impose qualifications different from those recognized at common law. Thompson and Merriman on Juries, Sec. 23. That this is generally true in the states is uncontroverted; and so the United States says that the Congress, sitting as a legislature for the District of Columbia, may determine and declare what those qualifications shall be. But the answer to this is obvious for, though the Congress possesses over the District "the combined powers of a general and of a state government in all cases where legislation is possible"—Stoutenburgh v. Hennick, 129 U. S. 141, 147—there is, as was said in Callan v. Wilson, supra—"Nothing in the history of the Constitution or of the original amendments, to justify the assertion that the people of this District [District of Columbia] may be lawfully deprived of the benefit of any of the constitutional guarantees of life, liberty, and property—especially of the privilege of trial by jury in criminal cases."—And this brings us back to a consideration of the limitations contained in the Sixth Amendment which alone apply to the United States.

The elements constituting trial by jury have been frequently defined by the courts as comprising a jury of twelve, under the superintendence of a judge, and a unanimous verdict. But these particular elements are only partial and are no more important than the specific provisions in the Sixth Amendment that the trial shall be speedy and public, that the jury shall be impartial, that the accused shall be confronted by the witnesses against him, and shall

have compulsory process for obtaining his own witnesses, and the assistance of counsel. Any statute which destroys a single one of these substantial and essential features of the right to jury trial is violative of the provisions of the Amendment and offends a fundamental principle. The right to a jury of twelve and that its verdict shall be unanimous is no more sacred than the right that the jury shall be impartial. The precise point we have in mind—that is to say, that all the common law elements of jury trial are imbedded in the constitutional provisions and are beyond the authority of the legislative department to destroy or abridge—is asserted by Mr. Justice Sutherland in Patton v. United States, 281 U. S. 276. At page 290 he says:

"The foregoing principles, while not furnishing a precise basis for an answer to the question here presented, have the useful effect of disclosing the nature and scope of the problem, since they demonstrate the unassailable integrity of the establishment of trial by jury in all its parts, and makes clear that a destruction of one of the essential elements has the effect of abridging the right in contravention of the Constitution."

Unless, therefore, it can be successfully maintained that the Act does not destroy an essential element of defendant's constitutional rights, it must be condemned. There can be no doubt that the words used in the Sixth Amendment were intended primarily for the protection of the accused. Patton v. United States, supra. And likewise there can be no doubt that the purpose of the Amendment was to secure to the accused the absolute right to be tried by a jury free of bias or prejudice. Here defendant asserted his privilege in due time. He protested that the effect of the Act was to destroy his right to challenge for cause; that the Act forced him to inquire of each government employee whether in fact he was or was
22 not impartial, and to be bound by his answers, and thus—as he claims—to be tried by a jury which, by every standard of the common law, was not an impartial jury.

The question, therefore, is: Does the relationship of employee and employer in such a case necessarily imply bias?

The Supreme Court in the Crawford case (supra) said that bias is an elusive condition of the mind that is difficult, if not impossible, to recognize. And hence, as the Court also said, the law wisely implies that, with regard to some of the relations which may exist between the juror and one of the parties, bias is assumed and evidence of its actual existence need not be given. Among those of whom it is implied, Blackstone says are included the party's master, his servant, his counselor, and his steward. We know of no dissent to this general proposition in all the intervening period; and so now it is universally held not permissible to permit a clerk or employee of a private party to sit as a juror in a civil case. Indeed, the rule is that a very small or insignificant interest in the result of the trial is sufficient to disqualify a person from sitting as a juror. In short, wherever there appears to be any self-interest, that fact pro-

vides an absolute disqualification. The rule but recognizes the unalterable fact that our human nature inevitably looks with favor upon the side that supplies the means of existence. And it would seem, in fairness, that the rule should and ought to apply equally to an employee of the United States. But we have no need to rely upon our own views, or to set them forth at any length, for the Supreme Court in the Crawford case has foreclosed all doubt on that subject. There a druggist was called on the jury panel, and in his examination on the vior dire, stated he did not know the defendant and had formed no opinion about his case; that his drug store was a subpostal station; and that he was the clerk in charge, and was paid $300.00 a year by the United States as compensation, out of which he paid the rental of the premises and the other expenses. In other words, that he received a modest compensation from the United States for keeping on hand and selling postage stamps. Such a relationship is far less intimate than that sustained to the United States by the jurors challenged in the present case. Yet he was held incompetent, the Court saying:

"A jury composed of government employees where the government was a party to the case on trial would not in the least conduce to respect for, or belief in, the fairness of the system of trial by jury. To maintain that system in the respect and affection of the citizens of this country it is requisite that the jurors chosen should not only in fact be fair and impartial, but that they should not occupy such relation to either side as to lead on that account to any doubt on that subject."

And:—

"The position of the juror in this case is a good instance of the wisdom of the rule. His position was that of an employee who received a salary from the United States, and his employment was valuable to him, not so much for the salary as for the prospect such employment held out for an increase in his business from the people who might at first come to his store for the purchase of stamps, etc. It need not be assumed that any cessation of that employment would actually follow a verdict against the government. It is enough that it might possibly be the case, and the juror ought not to be permitted to occupy a position of that nature to the possible injury of a defendant on trial, even though he should swear he would not be influenced by his relations to one of the parties to the suit in giving a verdict."

23 The ruling made in that case was grounded, not on the statute then in effect, but upon the common law doctrine of qualification, (the court indicating that the statute did not assume to change the common law). But it is well settled, as above pointed out, that at the time of the adoption of the Constitution, the common law concept of qualification was embodied in the Constitution by the use of the phrase—in the Sixth Amendment—"an impartial jury". That same doctrine, as we have seen, exists today with equal force, and it is the duty of courts to give it effect and thus

preserve the right of an accused to trial by a constitutional jury. And so we think that there is no more right to remove the disqualification of employment in the case of the sovereign than to remove it in the case of the citizen. Whether in the one or the other, the inherent disqualification of interest is a positive bar.

It may well be that in the case now under consideration the presence of two employees of the government on the jury did not affect the result, but because this is or may be so in the present case is not conclusive of the question. It is just as likely that in the next case similar conditions will affect the conclusion. Can it be doubted that this would be true if an accused were on trial for counterfeiting and the jury trying him were composed of employees of the Treasury Department or the Department of Justice, or can it be doubted either that, if the government were condemning land for forts or arsenals and employees of the Navy or War Departments were on the jury, their personal interests might sway their judgment? These, and other like illustrations instantly suggest themselves and prove unanswerably the wisdom of the rule. But beyond all of these is the main consideration that the strength of the law is the respect of the people for the law; and there can be no respect for the law except in the recognition and enforcement of those basic principles of justice "which inhere in the very idea of free government" and which it was the object and purpose of the Bill of Rights to secure and protect.

In the District of Columbia more than a hundred thousand government employees will be qualified as jurors if the statute is valid. In the instant case, when called, they represented nearly half the panel. In other cases they may well represent the whole. It is not enough to say that they might discharge their duties fairly to the accused.—They must be omni exceptione majus.

Reversed.

Dissenting opinion

ROBB, J., dissenting: In the Crawford Case the court said: "We do not think that Sec. 215 of the [1901] code of the District includes the whole subject of the qualifications of jurors in that District. *If that section, together with Sec. 217, were alone to be considered, it might be that the juror was qualified.* But, by the common law, a further qualification exists. If that law remains in force in this regard in this District a different decision is called for from that made in this case. The common law in force in Maryland, February 27, 1801, remains in force here, except as the same may be inconsistent with or replaced by some provision of the code for the District. * * * It has not been contended that the common law upon the subject of jurors was not in force in Maryland at the above-
24 named date, or that it did not remain in force here, at least

up to the time of the passage of the code. Jurors must at least have the qualifications mentioned in Sec. 215, but that section does not, in our opinion, so far alter the common law upon the subject as to exclude its rule that one is not a competent juror in a case if he is master, servant, steward, counsellor or attorney of either party. In such case a juror may be challenged for principal cause as an absolute disqualification of the juror. * * *" [Emphasis supplied.]

It thus appears that the decision in that case was put upon the common law rule—there being no statutory provision inconsistent with that rule.

The question raised in the present case was not involved and, of course, not decided in that case. "If", said the court, "that section [Sec. 215], together with Sec. 217, were alone to be considered, it might be that the juror was qualified." (212 U. S. at p. 195.) But the court held that those sections must be read in conjunction with the common law so far as that law had not been altered thereby. It will not be denied that the Act of 1935, "to amend the law providing for exemptions from jury service in the District of Columbia", is in part inconsistent with the common law rule. Prior to that enactment, bias was conclusively implied as to those embraced within the provision of Sec. 217 of the Code exempting "all executive and judicial officers, salaried officers of the Government of the United States and of the District of Columbia." This conclusive implication of bias continues to apply to those embraced within the provision of the first paragraph of Sec. 217 as amended by the 1935 Act, exempting "All executive and judicial officers of the Government of the United States and of the District of Columbia." But the last paragraph of Sec. 217, as amended, overrides the implication of bias as to the persons covered by the last paragraph, and, if "otherwise qualified according to law", the amendment makes the persons affected "qualified to serve as jurors in the District of Columbia * * *."

In my view that provision is well within the Constitutional power of Congress. It removes the disqualification, according to the majority opinion, of more than 100,000 government employees. In point of intelligence, character, and general fitness for jury service, those employees rank high.

The judgment should be affirmed.

A true copy.
Test:

Clerk of the United States Court of Appeals
for the District of Columbia.

25 In United States Court of Appeals for District of Columbia

No. 6646. January Term, 1936

RAYMOND WOOD, PLAINTIFF IN ERROR

vs.

UNITED STATES

Judgment

(March 25, 1936)

In error to the Police Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Police Court of the District of Columbia and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said Police Court in this cause be, and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said Police Court for further proceedings not inconsistent with the opinion of this Court.

Per Mr. JUSTICE GRONER.

MARCH 25, 1936.

Dissenting opinion by Mr. Justice Robb.

26 In United States Court of Appeals for the District of Columbia

[Title omitted.]

Designation of record

(Filed April 2, 1936)

The Clerk will please prepare a transcript on application for certiorari to the Supreme Court of the United States in the above entitled cause, including therein the following:

1. The Record.
2. Minute entry showing argument of cause.
3. Opinion of the Court, and dissenting Opinion of Mr. Justice Robb.
4. The Judgment.
5. This Designation.
6. Clerk's Certificate.

LESLIE C. GARNETT,
IRVIN GOLDSTEIN,
Attorneys for Defendant in Error.

Service of copy acknowledged this 2nd day of April, 1936.

WILLIAM E. LEAHY,
WILLIAM J. HUGHES, Jr.,
ROBT. I. MILLER,
Attorneys for Plaintiff in Error.

27 [File endorsement omitted.]

28 [Clerk's Certificate to foregoing transcript omitted in printing.]

U. S. GOVERNMENT PRINTING OFFICE: 1936

Order allowing certiorari

Filed May 25, 1936

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

75357—36